

11/13/03/04

DRIVEWAY REMEDIATION CASH CONTRIBUTION AGREEMENT
Driveway Apron and Curb Remediation for Pre-1997 FSM Plans

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the BOARD OF SUPERVISORS OF LOUDOUN COUNTY ("the County"); _____ ("the Subdivider"); and the Treasurer of the County of Loudoun, ("Agent").

WITNESSETH:

WHEREAS, the Subdivider is the developer of a certain subdivision identified as _____, SBRD _____ - _____, the "Project", pursuant to which Subdivider executed and delivered to the County a Performance Agreement secured by a Corporate Surety Bond/Letter of Credit (the "**Bond**") guaranteeing the construction and completion of the public streets and associated improvements serving the Project in accordance with construction plans designated as CPAP/STPL _____ - _____ (the "**Plans**") approved prior to June 18, 1997; and

WHEREAS, the Subdivider is seeking release of the Bond and, in conjunction therewith, the County has requested the Virginia Department of Transportation ("**VDOT**") to accept such streets into the secondary system of state highways ("**State System**"); and

WHEREAS, VDOT regulations for subdivision streets to be accepted into the State System require that the driveway flares for driveways intersecting such streets shall comply with certain specifications and tolerances in order to avoid premature and undue damage and deterioration to driveway aprons, sidewalks and associated curbs; and

WHEREAS, prior to June 18, 1997, the County Ordinance (Facilities Standards Manual ("**FSM**")) regulating the design and construction of such driveways contained no requirements for driveway flares such that the Plans were not required to comply with standards such as the VDOT standards then applicable (driveways constructed pursuant to plans approved prior to June 18, 1997, may be hereinafter referred to as "**Pre-1997 Improvements**"); and

WHEREAS, upon inspection, it has been determined that driveway flares on lots in the Project do not meet the said specifications and tolerances required by VDOT; and

WHEREAS, in lieu of requiring the Subdivider to reconstruct the undamaged non-

10/13/04

compliant driveways to VDOT specifications in order to obtain release of the Bond, the County has agreed to accept a cash contribution equivalent to a portion of the estimated cost of repair and/or replacement of the aprons, sidewalks and curbs based upon an estimate of the percentage of such aprons, sidewalks and curbs that may be damaged in the future as a result of such non-compliant driveway flares, which amount has been determined to be \$_____ (the “**Remediation Fund**”); and

WHEREAS, the County has received assurance from VDOT that based upon the establishment of the Remediation Fund for the Project and the execution of this Agreement, VDOT will accept such streets into the State System without requiring correction of the non-compliant driveway flares, provided that such streets otherwise meet all VDOT standards except for the non-compliant driveway flares; and

WHEREAS, the Subdivider and the County desire that aprons, sidewalks and curbs in the Project that become damaged subsequent to the acceptance of the roads into the State System be repaired as needed in a coordinated and timely manner, and wish to establish the manner and the responsibility of each party with regard to such improvements;

NOW THEREFORE, for and in consideration of mutual covenants herein stipulated to be kept and performed, the parties agree as follows:

1. The Subdivider hereby deposits the sum of \$_____ to be deposited into an account (the “Account”) to be held by the Treasurer of the County of Loudoun, as Agent for the benefit of the County. This account and all interests accruing on it shall be held by the County to be applied to the construction or completion of the improvements identified in Paragraph number 2 of this Agreement, except that 5% of any interest accrued shall be retained by the County to cover costs of administering the account.

2. The County agrees that, until December 31, 2018, funds deposited by the Subdivider into the account will be used for the following improvements: Repair of driveway aprons, sidewalks and curbs associated with non-compliant driveway flares for driveways in the Project (the “Repairs”) that become damaged subsequent to the acceptance of the roads into the State System. After December 31, 2018, any such funds and or accrued interest remaining in the account may be used at the discretion of the Director for any multi-modal transportation

improvements, including, without limitation, streets, roads, sidewalks, or trails, in any area of the County where developments containing any Pre-1997 Improvements are located.

3. It is contemplated that, upon acceptance into the State System, VDOT will be responsible for routine maintenance of the roads, to include those Repairs specified in Paragraph 2, above.

4. The provisions of Paragraph 3 notwithstanding, the County may take such action as required for the completion of the work described in Paragraphs 2 and 3 when, in its sole discretion, the County determines that the public interest would be best served thereby.

5. Upon certification by the Director of the Department of Building and Development of Loudoun County (the "Director"), or his designee, that a contract for the Repairs specified in Paragraph 2 above has been awarded by VDOT or that such improvements have actually been completed, the Agent shall release to VDOT, or to such other person designated by the Director, or his designee, such amounts from the Account as certified by the Director to be properly due and payable, as an assignment of the fund deposited by the Subdivider.

6. The County is under no obligation to complete the improvements.

7. This Agreement, when properly executed, shall be binding upon the parties hereto and their representatives, successors, and assigns.

IN WITNESS WHEREOF, each party has caused this agreement to be executed in triplicate in its name and on its behalf by its duly authorized officer as of the day, month and year written above.

[REMAINDER OF PAGE PURPOSELY BLANK.]

[SEE FOLLOWING PAGES FOR SIGNATURES.]

My 03/04

Subdivider

By _____ (SEAL)
(Name)

(Title or Office)

BOARD OF SUPERVISORS
OF LOUDOUN COUNTY

By _____
(Title or Office)

TREASURER, COUNTY OF LOUDOUN

Treasurer

**[Add appropriate
notary blocks]**